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***Drugs, deceit and damage in thirteenth-century Herefordshire: new perspectives on medieval surgery, sex and the law***

**Abstract**

This article discusses *Plomet v Worgan*, a case from a thirteenth-century legal record, concerning a medical man's use of a drug (*dwoledreng*) to obtain sex from a female patient. Issues which arise include: the nature of the drug in question; the nature of surgical practice in this early, provincial, setting; ideas about sexual consent and incapacity and the response of the legal system to such medical misconduct. The case shows the flexibility and complexity of ideas about sexual misbehaviour current in thirteenth century law and society. It provides valuable material on medieval English medical practice and gives insights into the treatment of medical misconduct before the better-known development of the 'medical negligence' jurisdiction of actions on the case in the second half of the fourteenth century and the growth of professional regulation.

**Key words**

Medieval, surgery, sexual offences, incapacity, drug, *dwoledreng*, *dwale*

***Drugs, deceit and damage in thirteenth-century Herefordshire  
perspectives on medieval surgery, sex and the law<sup>1</sup>***

Two rolls from a medieval court session before the king's justices in eyre in Hereford tell the story of the misconduct of a provincial medical man in his dealings with a woman who came to him for treatment. The records recount that, at an unspecified date in or before June 1292, a Hereford woman, Isabella Plomet, consulted one Ralph de Worgan of Cricklade, as a surgeon, and accompanied him to Ross-on-Wye for treatment. Once they got there, however, Ralph did not conduct himself in accordance with his patient's expectations; in fact, Isabella was so unhappy with her treatment at the hands of Ralph that she took legal action against him, bringing a plaint to the eyre of Herefordshire of 1292. A jury found in her favour, giving her some degree of recompense for her mistreatment.<sup>2</sup>

The jury, upon which Isabella Plomet of Hereford, complainant, and Ralph de Worgan of Cricklade put themselves, found that, when Isabella Plomet of Hereford had a disease [or weakness] in one of her lower legs,<sup>3</sup> and consulted the said Ralph as a surgeon, the said Ralph agreed [or covenanted] to treat the same Isabella,<sup>4</sup> saying that he could not cure her [or could not

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<sup>1</sup> I am grateful to those who have commented on earlier versions of this paper at the Bristol Centre for Medieval Studies and British Legal History Conference 2015, to Professors Monica Green and Linda Voigts for their interest and comments, to Dr Cathy Hume for guidance on Middle English, to those acknowledged in notes below and to the journal's anonymous reviewers. Remaining errors are my own.

<sup>2</sup> JUST 1/302 (Rex Roll) m. 76; JUST 1/303 (Berwick's Roll) m. 75. (National Archives, Kew). The texts are very similar, My translation is based on the JUST 1/303 version:

Conv[ictum] est per jur[atam] in q[ua]m Isabella Plomet de Hereford quer[ens] & Rad[ulphu]s de Worgan de Crekelade se posuer[unt] qu[od] cum pred[ict]a Isa[bella] h[abui]sset quenda[m] morbu[m] in una tibia sua et venisset ad predict[um] Radulph[um] tanqu[am] ad surigicu[m], idem Rad[ulphu]s convencionavit curare ipsam Isabella[m] dicendo quod ipsa[m] percurare non potui[t] nisi secum venisset apud Ros obq[uod] eadem Isab[ella] adhesit consilio ip[s]ius Radulphi & secum ivit apud Ros & ibid[em] predict[us] Radulph[us] dedit ei bibere quendam potu[m] q[ui] vocat[ur] Dwoledreng. Postea cu[m] ea co[n]cubuit contr[a] voluntat[em] su[a]m. Id[e]o predict[us] Radulph[us] committat[ur] Gayol[e] quousque satisfac[er]it predict[e] Isab[elle] & domin[o] Regi. Postea ven[it] predict[us] Radulph[us] & finem fecit cu[m] predict[a] Isab[ella] q[uam] ei reddet incontinenti una[m] marca[m] p[er] pl[egium] Joh[annis] de Dudleye, Joh[annis] de Arundel, Joh[annis] de Clumbare, Joh[annis] de Landon & Joh[annis] de Magna Teynton. Et quia predict[us] Radulph[us] minab[atur] predict[am] Isabell[am], id[e]o invenit predict[um] Joh[annem] & aliis de pace etc. Et similiter finem fecit p[ro] mi[sericordia] p[er] xl. den[arios] p[er] pl[egium] Joh[annis] de Dudleye & Joh[annis] de Arundel.  
[Margin - Gayol, crossed out and xl d, crossed out].

<sup>3</sup> The word used is *morbum*, which could cover a wide range of conditions. The problem is located in her *tibia* (shin or lower leg).

<sup>4</sup> *curare*. The word *convencionavit* is used for agreement

cure her completely]<sup>5</sup> unless she came with him to Ross (on Wye). For this reason, the same Isabella followed the advice of the same Ralph and went with him to Ross,<sup>6</sup> and there, the said Ralph gave her a certain draught called ***dwoledreng*** to drink. Afterwards, he had sex with her against her will.<sup>7</sup> Therefore, the said Ralph is committed to gaol until he shall have satisfied the said Isabella and the King. Afterwards, the said Ralph came and made fine with the same Isabella, immediately paying her one mark by pledge of John de Dudley, John de Arundel, John de Landon and John of Great Teynton. And because the same Ralph threatened the same Isabella, he found pledges of the peace, i.e. the same John and the others. And similarly, he made fine for the amercement with 40 d, by the pledges of John de Dudley and John de Arundel.

The records of *Plomet v. Worgan* are tantalisingly brief, leaving many questions concerning evidence in particular: we will never have the details of how Isabella managed to prove her case. In addition, as with all such medieval legal records, one must be alive to the possibility that the facts as argued and found may not actually represent the truth or the whole truth of dealings between Isabella and Ralph. The risks of jury bias, plaintiff untruth or presentation of facts so as to fit within narratives most likely to achieve desired results and distortions introduced in the process of record-making should always be borne in mind. Nevertheless, because the records show that Isabella's story was clearly at least plausible to the jurors and the court, it serves to shed some light, however flickering, into some dark corners of medical, medico-legal and social history in the later thirteenth century, beyond the common focus on practice in London and other large urban centres, and on the later medieval period, with its increasing regulation of medical practitioners, or on military medicine.<sup>8</sup> It adds to existing scholarship in relation to the use of drugs in medieval

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<sup>5</sup> *percurare*

<sup>6</sup> Now Ross-on-Wye, this is a small town some eleven or twelve miles away from Hereford.

<sup>7</sup> *cum ea concubuit contra voluntatem suam*.

<sup>8</sup> See, e.g., C. Rawcliffe, *Medicine and Society in Later Medieval History* (Far Thrupp, 1995), 'The profits of practice: the wealth and status of medical men in late medieval England', *Social History of Medicine* I (1988), 61-78, 'A fifteenth century medicus politicus: John Somerset, physician to Henry VI', in H. Kleineke (ed.), *Parliament, Personalities and Power: papers presented to Linda Clark* (Woodbridge, 2011); J.K. Mustain, 'A rural medical practitioner in fifteenth century England', *Bulletin of the History of Medicine* XLVI (1972), 469, B. Grigson, 'The social position of the surgeon in London

surgery, the abuse of both drugs and trust, and the response of the law and the wider population to sexual misconduct.

### Ralph de Worgan as a surgeon

The first thing to consider is the position or status of the villain of the piece, Ralph de Worgan. Isabella Plomet, we are told, went to him ‘as to a surgeon’,<sup>9</sup> but is he to be regarded as in any sense a trained or ‘professional’ medical man, or a ‘medical tradesman’?<sup>10</sup> There is very little contemporary evidence concerning medicine in thirteenth-century Herefordshire, though there may be a suggestion of a lack of high-level local expertise earlier in the thirteenth century in the fact that, in 1257, Bishop Peter of Aigueblanche (1240-68) went to Montpellier for treatment of a nasal polyp or leprosy rather than seeking treatment locally.<sup>11</sup> The 1292 eyre rolls give no clues as to where the people of Hereford might seek medical or surgical help, (if they were not content to rely on the proto-saintly intervention of deceased bishop Thomas Cantilupe).<sup>12</sup> Ralph is not referred to by a learned title such as ‘master’ or ‘doctor’, and does not appear in any other legal record or list of medical men.<sup>13</sup> It seems unlikely that he would have followed a university-based course of study, since surgery was not, at this point in time, a university-taught subject in England, and

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1350-1450’, *Essays in medieval studies* 11 (1996) 75; P. M. Jones, ‘Thomas Fareford: an English fifteenth century medical practitioner’, in R. French et al (eds), *Medicine from the Black Death to the French Disease* (Aldershot, 1998), 156-63; S.M. Butler, ‘Portrait of a surgeon in fifteenth century England’, in W.J. Turner and S.M. Butler (eds) *Medicine and the Law in the Middle Ages* (Leiden, 2014), c. 10; ‘Medicine on trial: regulating the health professions in late medieval England’, *Florilegium* 28 (2011) 71-94. S.M. Butler, *Forensic Medicine and Death Investigation in Medieval England* (New York and London, 2015), reaches lower down the social scale.

<sup>9</sup> *tamquam ad surigicum*

<sup>10</sup> See F. Getz, *Medicine in the English Middle Ages* (Princeton, 1998), 5-6. We should not assume too clear a dividing line between ‘professional medicine’ and ‘folk-medicine’ or ‘domestic medicine’ in late-thirteenth-century England, particularly outside major cities, and in the sphere of surgery.

<sup>11</sup> J. Barrow (ed.), *English Episcopal Acta* vol. 35, Hereford 1234-75 (Oxford, 2009) lx. Herefordshire medics from an earlier period are listed, for example, in Getz ‘Medical practitioners’, 261, 262, 263, 269, 270, 272, 277

<sup>12</sup> M. Richter, ‘Collecting miracles along the Anglo-Welsh border in the early fourteenth century’, in D.A. Trotter (ed.), *Multilingualism in Later Medieval Britain* (Woodbridge, 2000) 53-62. The 1292 eyre rolls do name one ‘David le Barbour’, who might conceivably have engaged in some surgery: JUST 1/302 m. 80d. There is also a ‘Ranulph Medicus’, reported by the jurors of Leominster to have fled on suspicion of burglary: JUST 1/303 m.69.

<sup>13</sup> Neither Ralph nor any of his pledges appear in C.H. Talbot and E. A. Hammond, *The Medical Practitioners of Medieval England* (London, 1965), nor F. Getz, ‘Medical practitioners in medieval England’, *Social History of Medicine* 3 (1990), 245-83.

university-trained medics were an expensive elite,<sup>14</sup> whereas this case shows Ralph dealing with an otherwise obscure woman,<sup>15</sup> suggesting that he was operating at a fairly low social level. Ralph may have had some less bookish and more practical form of training in surgery or medicine, but if so, this is beyond trace. Indeed, it is not even possible to say whether surgery was his primary occupation, since this case is the only record of his medical practice.<sup>16</sup> Nevertheless, however Ralph should be classified in professional terms, there are two factors which suggest a certain degree of reputed competence in medical or surgical treatment: first, the trust put in him by Isabella Plomet, and second, his ability to administer *dwoledreng* (the nature of which will be discussed below, but which can, at this point, be said at least to have been a potentially dangerous preparation) in such a way as apparently to produce incapacity without killing the patient.

The record states that Isabella went to Ralph to ask for help with her medical condition, suggesting that he enjoyed some local reputation for surgical or medical practice. The language suggests that the pair made a formal agreement for medical treatment - Ralph 'covenanted' to treat her, and she followed his counsel - this also has the air of a degree of professionalism or assumed expertise.<sup>17</sup> In addition, Isabella had sufficient faith in Ralph's abilities (and presumably in his integrity, however misplaced this faith might have been) to contemplate his acting in relation

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<sup>14</sup> Rawcliffe, *Medicine and Society*, c.6, 126; J. Clasper, 'The management of military wounds in the Middle Ages', in A. Kirkham and C. Warr (eds), *Wounds in the Middle Ages* (Ashgate 2014), c.1 p. 28; M.R. McVaugh, 'Surgical education in the Middle Ages', *Dynamis*, 20 (2000), 283-304; Turner and Butler, *Medicine and the Law*, 17. Regulation of alternative training was not general in England at this time, though see M. Prestwich (ed.), *York Civic Ordinances 1301* (York, 1976), 17-18.

<sup>15</sup> Accepting the dangers of arguments from silence, there are some suggestive silences. First, given the absence of any reference to a husband, living or dead, a tentative conclusion that she was unmarried might be suggested. Secondly, although she cannot have been penniless if she was contracting for medical services, there is no sign that her family was prominent. The only other traces of Plomets in the eyre of 1292 are Richard son of Walter Plomet, who killed a man when they fought at night in Hereford, and subsequently abjured the realm, Reginald Plomet, accused of being part of a group which had wrongfully arrested innocent pilgrims: JUST 1/303 m.75, and John Plomet, who had met his death by falling from a horse into a ditch (both JUST 1/303 m. 62; JUST 1/302 m.34.). There are no Plomets in JUST 1/304 and 305, rolls relating to assizes just after the eyre, nor in the trailbaston proceedings of the last years of Edward I, JUST 1/306 and JUST 1/307. There is, however, a Nicholas Plumet, involved in barn burning, charter stealing, and theft: JUST 1/306 mm. 8, 12; JUST 1/307 m. 8d, and, more respectably, a Walter Plumet who was vicar of Madely around this time (*CPR 1292-1301*, 285. *I am grateful to an anonymous reviewer for this reference*) Ralph himself was not a member of the lowest stratum of society, since he appears to have had some land (one messuage) in the city of Hereford: JUST 1/302 m. 44d, m. 97; JUST 1/303 m. 47. Despite the closeness of the names, it would be too much of a stretch to identify Ralph with the suspected burglar Ranulph Medicus, above, note 12.

<sup>16</sup> Medieval surgeons might undertake other work: see, e.g. Rawcliffe, *Medicine and Society*, 133.

<sup>17</sup> The terms used are *convencionavit* and *adhesit consilio ipsius Radulphi*.

to her injured leg, probably in an invasive and/or painful manner,<sup>18</sup> to follow him away to Ross for treatment,<sup>19</sup> and to take the *dwoledreng* when he offered it to her. These findings make it clear that Ralph was regarded as having more than everyday expertise in surgery and associated procedures.

## Dwoledreng

The identity of the substance here called '*dwoledreng*', and said to have been given by Ralph to Isabella, is not entirely clear, as no further details of its make-up are given. The record tells us only that it was said to have been provided by a man acting as a surgeon, to a woman he had undertaken to treat, and that, in contrast to the Latin of the rest of the legal record, it was given an English name. There is, however, external information and important scholarship in this area, which, when taken together with the text and context of *Plomet v Worgan*, gives some idea of the nature of *dwoledreng*. Scholarship on the use of anaesthetic or soporific drugs in surgery has shown that learning about a variety of different substances, in a variety of different combinations, was available to medieval medical practitioners, including those in England.<sup>20</sup> In some cases, receipts have been preserved, and in others we

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<sup>18</sup> Possibilities include bone-setting, probing or removing infected tissue, and amputation. See, e.g., Clasper, 'The management of military wounds'; N.G. Siraisi, *Medieval and Early Renaissance Medicine: an introduction to knowledge and practice* (Chicago and London, 1990), 176; Butler, *Forensic Medicine*, 253.

<sup>19</sup> Although Ralph appears to have had land in the city of Hereford: JUST 1/302 m. 44d, m. 97; JUST 1/303 m. 47, this might suggest that he did not maintain a place of business there, instead taking Isabella to Ross for treatment. His operating from Ross would chime in with evidence such help might be available even in relatively small centres of population, though if Ralph based himself in a small settlement and sought clients in the local cathedral city, his 'business model' was slightly different to those noted elsewhere: Butler, *Forensic Medicine*, 251-2; V L Bullough, 'Medical practice in the Middle Ages or who treated whom', in V. L Bullough, *Universities, Medicine and Science in the Med West* (Aldershot, 2004), 277-88. Taking Isabella to Ross might remove her from people she knew, rendering her more vulnerable to predation. Ross was an estate of the Bishop of Hereford, which may have been expected to shield activities there from royal or civic intervention. On Ross, see, e.g. W.W. Capes (ed.), *Registrum Ricardi de Swinfield episcopi Herefordiensis AD MCCLXXXIII - MCCCXVII* (London, 1909), 85, 516; A.T. Bannister, 'A Transcript of the Red Book of the Hereford Bishopric Estates in the Thirteenth Century', *Camden Miscellany* vol 15 Camden third series vol. 41 (1929) item 1 pp.1-33, p.vi. p.viii; *Calendar of Charter Rolls 1226-57* p. 256. J. Barrow (ed.), *English Episcopal Acta vii Hereford 1079-1234* (Oxford, 1993): xliii; CRR xviii no 847, 979, 1811, 1879.

<sup>20</sup> There are several receipts for pain-controlling medication in Roger of Frugardi's *Chirurgia*: see K. Sudhoff, *Beiträge zur Geschichte der Chirurgie im Mittelalter* vol. 2 (Leipzig, 1918), 156-236, T. Hunt (ed), *Anglo Norman Medicine Vol I Roger Frugard's Chirurgia and the Practica Brevis of Platearius* (Woodbridge, 1994). This text suggests the use of, for example, henbane, l:46, l:52, l:54 and poppy,

have only a name.<sup>21</sup> The situation with *dwoledreng* is that there is a detailed receipt which may relate to it, but that there are difficulties in coming to a firm conclusion identifying the *dwoledreng* of *Plomet v. Worgan* with the preparation described in this detailed receipt.

Linguistically, the first part of the word, *dwale*, is recognised as a variant form of *dwale*.<sup>22</sup> *Dwale* or *dwale* in literary contexts has been interpreted to include ideas of evil, incitement to sin, deception, delusion, error, folly and lack of consciousness.<sup>23</sup> In the more practical context of the *Plomet* case, some more specific definitions must be considered. First, *dwale* is used to describe a particular plant, deadly nightshade.<sup>24</sup> Secondly, it is used to describe a particular draught involving mixed ingredients, not, in fact, including deadly nightshade, according to recipes which appear in several later medieval English manuscripts, treated in an important article by Voigts and Hudson.<sup>25</sup> These recipes recommend a preparation called *dwale* as an anaesthetic or stupefacient for use during surgery, so that the patient ‘sleep[s] while men carve him’. A well-known version of the recipe calls for specific quantities of

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mandrake, henbane, morel (nightshade) (III:X) for the relief of pain. M.H. Green, ‘Salerno on the Thames: The Genesis of Anglo-Norman Medical Literature’, in J. Wogan-Browne et al. (eds), *Language and Culture in Medieval Britain: the French of England c. 1100-c.1500* (York, 2009) c. 17 especially at pp. 221-2. For a Welsh comparison, see also J. Pughe (trans.) *The Physicians of Myddfai. Ancient Herbal and Other Remedies Associated With a Legend of the Lady of the Lake. A Facsimile Reprint* (Llandovery: Llanerch, 1993). p. 242 no. 719; Morfydd E Owen, ‘Meddygon Myddfai: a preliminary survey of some medieval medical writing in Welsh’, *Studia Celtica* ix/x (1975-6), 210-33. Note, however, that physical restraint was sometimes indicated for those undergoing operation, without mention of drugs: Frugardi. *Chirurgia* Roger, I:26; L. Paterson, ‘Military surgery: knights, serjeants and Raimon of Avignon’s version of the *Chirurgia* of Roger of Salerno, 1180-1209’, in C. Harper-Bill and R. Harvey (eds), *The Ideals and Practice of Medieval Knighthood II* (Woodbridge, 1988), 117-46, 138. Clearly, some regarded anaesthetic drugs as dangerous: see L. Voigts and R.P. Hudson, ‘A drynke that men callen dwale to make a man to slepe while men kerven hem’ a surgical anaesthetic from late medieval England’, in S. Campbell, B. Hall and D. Klausner (eds), *Health, Disease and Healing in Medieval Culture* (Houndmills, 1992), 34-56, 46; R. Grothé, ‘Le MS Wellcome 564: deux traités de chirurgie en moyen anglais’ Ph.D. dissertation, University of Montreal, 1984; E. Cohen, *The Modulated Scream: Pain in Late Medieval Culture* (Chicago, 2010), 101, 108; W. O. Schalick III ‘To market, to market: the theory and practice of opiates in the Middle Ages’, in M.L. Meldrum (ed.), *Opioids and Pain Relief: A Historical Perspective, Progress in Pain Research and Management* vol. 25 (Seattle, 2003), 5-20, 10-12; Rawcliffe, *Medicine and Society*, 77.

<sup>21</sup> For an earlier anaesthetic preparation called letargion, allegedly used in Britain and recorded in a twelfth century document, see below, note 43.

<sup>22</sup> Kurath et al. (eds), *Middle English Dictionary* (Ann Arbor, 1952-2001), 182-3. Voigts and Hudson, ‘A drynke’, 35, note the possible derivation from Old English *dwol*, *gedwol*, *dwola*, *gedwola*, or Old Norse *dvala* (sleep, trance): *Dreng* indicates a draught or drink, and the *Middle English Dictionary*, 175, notes its use in a medicinal context from at least the twelfth century.

<sup>23</sup> Voigts and Hudson, ‘A drynke’, 35; N. Cartlidge ed, *The Owl and the Nightingale: text and translation* (Exeter, 2001) Glossary, p. 173, I. 926; 1239; I.825 1777n; J.W.H. Atkins (ed.) *The Owl and the Nightingale*, (Cambridge, 1922), 209.

<sup>24</sup> Voigts and Hudson, ‘A drynke’, 35.

<sup>25</sup> See above, note 20.



pig's gall, hemlock juice, wild nept (bryony), lettuce, poppy, henbane and vinegar, mixed, boiled and added to good wine.<sup>26</sup> For the sake of brevity, I refer to this below as 'Voigts-Hudson dwale'.<sup>27</sup> A third usage which should be considered is that appearing in later literary sources: the domestic sleeping draught called *dwale* which appears in Chaucer's *Reeve's Tale*,<sup>28</sup> and which may or may not have been broadly similar to Voigts-Hudson dwale, if, perhaps, not needing to be so potent.

Given the brevity of the record, it is not possible to be certain which of these possible readings of *dwoledreng* is to be preferred in this context. It is possible that Ralph is to be understood to have used a nightshade-derived preparation, though later evidence of concern at the dangers inherent in drugs using this type of ingredient and the apparently much greater popularity of Voigts-Hudson dwale manuscripts than those involving nightshades might be seen to suggest that one of the other possible readings is preferable.<sup>29</sup> There is no known recipe for Voigts-Hudson dwale predating this case, and the gap between 1292 and the earliest of Voigts and Hudson's recipes is a long one, with no positive evidence to bridge it beyond the use of related English names and the suggestive discovery of quantities of the main active ingredients of Voigts-Hudson dwale at the site of an early fourteenth century hospital in Scotland.<sup>30</sup> The large number of manuscripts containing the receipt for Voigts-Hudson dwale, however, despite the fact that none is as early as *Plomet v Worgan*, and the apparently insular nature of this preparation,<sup>31</sup> make it reasonable

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<sup>26</sup> Voigts and Hudson 'A drynke', 34; CUL MS Dd.6.29 fol. 79r-v. See also A.J. Carter, 'Dwale: an anaesthetic from Old England', *British Medical Journal* (1999) 319, 1623-6 and the articles by T. Husemann noted in note 43, below. I am grateful to an anonymous referee for alerting me to Husemann's work.

<sup>27</sup> There is a link in a fifteenth-century *Synonyma herbarium* between *dweledrink* and opium: *Synonyma herbarium*, BL Harley 3388 ff. 75r-86v; T. Hunt, *Plant Names of Medieval England* (Cambridge, 1989), 191 Voigts and Hudson, 52-3, note 29.

<sup>28</sup> Voigts and Hudson, 'A drynke', 35; Chaucer's 'Reeve's Tale', L. Benson (ed.), *The Riverside Chaucer*; (Boston, 1987,) ll. 4160-1.

<sup>29</sup> Voigts and Hudson, 'A Drynke', 34.

<sup>30</sup> Voigts and Hudson, 'A drynke', 48-9; B. Moffat, 'The seeds of narcosis in medieval medicine: *Historical Anaesthesia Society Proceedings* 22 (1998) 7-12. See, however the comments of Voigts and Hudson, 'A drynke', 42 on Moffat's earlier work on a similar theme, B. Moffat, 'S.H.A.R.P. Practice - the search for medieval medical treatments', *Archaeology Today*, May 1987, 26.

<sup>31</sup> Voigts and Hudson, 'A drynke', 34, 46, note the lack of evidence for this recipe in Latin, or in most treatises by surgeons. This may be contrasted with the route of dissemination in other contexts, with translations into the vernacular from Latin: Butler, *Forensic Medicine*, 234; L. Demaitre, 'Medical writing in transition: between ars and vulgus', *Early Science and Medicine* 3 (1998) 88-102, and particularly with the frequent continental origin of medical writings which made their way to England: see, e.g. Green, 'Salerno on the Thames'. English is relatively rare in the plea rolls, and, the use of an English name here probably reflects the lack of a well-known or appropriate Latin word rather than any more deliberate 'code switching' to create a particular effect. This may be argued to suggest an

to infer that knowledge of it is likely to have gone back some distance beyond the manuscript evidence. Likewise, the surgical context in *Plomet v Worgan* could be used to argue in favour of the likelihood of *dwoledreng* being something akin to Voigts-Hudson dwale, which, in almost all manuscripts, stresses its use for ‘cutting’, locating it in the province of surgeons of some sort, rather than the purely domestic context.<sup>32</sup> Whether or not this identification of *dwoledreng* with Voigts-Hudson dwale is accepted, it can be concluded that both low-level English medical practitioners and a wider public were aware of drugs or a family of drugs called *dwale*, *dwole* or *dwoledreng*, and the broad nature of the effect which such substances might have on consciousness and capacity.<sup>33</sup> According to the records in this 1292 case, Isabella Plomet drank the preparation which she was offered. Had she been unfamiliar with such a preparation, she might have refused to drink it, and, had the jury been unfamiliar with it, they might have described it as poison, or might have felt the need to explain its likely or actual effects. That they did not seems to suggest a reasonably high level of ‘public awareness’ of the broad nature of such a drug or preparation in the late thirteenth century.<sup>34</sup> This awareness could be taken as some evidence of relatively wide-spread use of such anaesthetics, soporifics or

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insular origin for *dwoledreng*. Note also, however, that there are breakings into English in cases of poison - e.g. *venen[um] vocat’ arsnik*. in a later medieval case: KB 27/884 m. 121, the 1305-6 case in JUST 1/1108 m. 14d, which mentions *quemdam potum mixtum cum Resalger*, and KB 27/883 m. 70d (1482) referring to *quemdam potum mortifer[um] venenosum ac intoxicatum vulgariter nuncupatum poysyn drynke*. Other poisoning cases simply use the unspecific Latin word *venenum*, e.g. JUST 1/374 m. 85d; JUST 1/135 m.14; JUST 1/1098 m. 82; JUST 1/306 m. 8; CP 40/719 m. 585d. For mixing languages, see D.A. Trotter (ed.), *Multilingualism in Later Medieval Britain* (Woodbridge, 2000).

<sup>32</sup> Because the later manuscripts discussed by Voigts and Hudson were in the vernacular, it has been suggested that ‘housewives’ rather than surgeons were the ones who used Voigts-Hudson dwale: Carter, ‘Dwale’, 1626. There seems no reason to assume that domestic use means use by women, however, and the sophistication of the recipe and nature of the ingredients (not to mention the idea of using the preparation to perform surgery) would seem to make it unlikely that housewives were the intended users of this variety of dwale. Note also the warning against the assumptions that women were a frequent intended or actual readership for medieval vernacular medical texts: M.H. Green, ‘The possibilities of literacy and the limits of reading: women and the gendering of literacy’, in M. H. Green, *Women’s Healthcare in the Medieval West: Texts and Contexts* (Aldershot, 2000), c. VII, pp. 1-76. The fact that the later recipes are in written form, albeit in English, suggests a readership with at least functional English literacy.

<sup>33</sup> Note that this case shows dwale administered as a drink, not using the ‘soporific sponge’: Voigts and Hudson, ‘A drynke’, 43.

<sup>34</sup> Belief in such compounds can also be seen in the mysterious ‘powder to make men sleep for three days, or kill them’ (1346): KB 27/343 m.28; compare Voigts and Hudson, ‘A drynke’, 34; Yale Medical School MS 27 f. 37.

stupefactive in this early period. Given that much evidence relating to such substances is theoretical rather than practical,<sup>35</sup> this is valuable.

What would have been understood to be the effect on Isabella of *dwoledreng*?

Answering this question is complicated not only by the doubt as to the ingredients of the drug, but also by doubt as to the strength of the various individual substances which would have been available to those preparing it, and by the variety of different suggestions or conclusions as to their effect. The receipt for Voigts-Hudson dwale is clear that the most important effect will be that the patient will fall asleep: by implication so deeply asleep that s/he will not wake up during invasive surgery, and may have to be woken up afterwards, by judicious employment of salt and vinegar. The contemporary reputation of the ingredients in Voigts-Hudson dwale, and of belladonna, included action as: cooling agents, aphrodisiacs, inducers of 'frenzy', anaesthetics, soporifics, inducers of drowsiness and anaphrodisiacs (as well as poisons). Modern commentators note that substances found in plants included in Voigts-Hudson dwale, and in nightshades, may cause varying effects, including: tranquility, disorientation, hallucination, altered response to pain, anaesthesia, respiratory depression, depression of motor and sensory centres or excitement of the central nervous system, and may be purgatives, or may slow down gastrointestinal motility, but that it is not entirely clear whether mixing the various ingredients would serve to intensify or to moderate their individual effects.<sup>36</sup> The jurymen in *Plomet v. Worgan* appear to have accepted the role of the *dwoledreng* in this episode as something which at least diminished and perhaps completely removed Isabella's ability to resist unwanted penetration by Ralph.<sup>37</sup> The penetration of Isabella was said and accepted to have been *contra voluntatem suam*. This

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<sup>35</sup> See, e.g. F. Wallis (ed.), *Medieval Medicine: a Reader* (Toronto, 2010), 315-6.

<sup>36</sup> Voigts and Hudson, 'A drynke', 34, 35, 37-40; John Arderne, ed. D'Arcy Power, *Treatises of Fistula in Ano, Haemorrhoids and Clysters*, (London, 1910), 101; G. Brodin ed, *Agnus Castus, A Middle English Herbal, Essays and Studies on English Language and Literature* 6, (Uppsala 1950), 140; Schalick, 'To market', 13; M.C. Wellborn, 'The errors of the doctors according to Friar Roger Bacon of the Minor Order *ISIS* 18 (1932) 26-62; M.K. Lee, 'Solanaceae IV: Atropa belladonna, deadly nightshade' *Journal of the Royal College Of Physicians of Edinburgh*, 37 (2007) : 77-84; J. Emsley, 'Molecule of murder', *Chemistry World* (2008), 64-66; J.L. Mueller, 'Love potions and the ointment of witches: historical aspects of the nightshade alkaloids', *Clinical Toxicology* 36 (1998). 617-27, 622-5; E Cohen, *The Modulated Scream: Pain in Late Medieval Culture* (Chicago 2010), 101; Carter, Dwale, Mueller, 'Love potions', *Clinical Toxicology* 36 (1998). 617-27; N. Everett and M. Gabra, 'The pharmacology of medieval sedatives: the 'Great Rest' of the Antidotarium Nicolai' *Journal of Ethnopharmacology* 155 (2014) 443-9. I am grateful to Professor Monica Green for the last reference.

<sup>37</sup> The jury in this context would be all male, and qualified by holding property within the county: Statute of Westminster II (1285) c.38.

suggests action contrary to a contemporaneous will. Such a conscious will might have been assumed not to be present in an unconscious woman. This phrase, therefore, might seem to narrow down the likely lay understanding of the effects of *dwoledreng* to wakeful incapacity rather than either stimulation to participate in sex on the one hand, or total loss of consciousness on the other. When considered alongside the information available in medieval medical works, and modern scientific research, such clues from the legal record may contribute to the challenging task of determining the effects - assumed or actual - of medieval drugs and preparations of this sort.

### **Sexual misconduct and medical men**

*Dwoledreng* or *dwale* could bring relief or peril to a patient, and, similarly, the medical man, and the trust reposed in him, could alleviate pain but could also pose a danger to women.<sup>38</sup> Surgical treatment of female patients might involve granting a man a level of access to their bodies which would, in the ordinary course of life, be regarded as entirely inappropriate and hazardous.<sup>39</sup> There is evidence that this was a concern, though not always one which limited the activities of medical men.

The idea of women's shame at the possibility of discussing the intimate workings of their bodies, or of allowing a male medic access to their bodies, is present in many medieval texts, particularly in connection with gynaecological and obstetric practice, and is clearly connected to the situation's potential for sexual impropriety.<sup>40</sup> Even

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<sup>38</sup> Note the suggestion of a late thirteenth century and early fourteenth century move from distant diagnosis to a closer relationship between patient and medical professional, in learned texts: M.R. McVaugh, 'Bedside Manners in the Middle Ages', *Bulletin of the History of Medicine* 71 (1997) 201-223.

<sup>39</sup> See M.H. Green, *Making Women's Medicine Masculine: the rise of male authority in pre-modern gynaecology* (Oxford, OUP, 2008). 23 and *passim*; M.H. Green, 'Moving from philology to social history: the circulation and uses of Albucasis's Latin Surgery in the Middle Ages', in F.E. Glaze and B. Nance (eds), *Between Text and Patient: the medical enterprise in medieval and early modern Europe* (Florence, 2011), 331-72. P.M. Jones, in "The gynaecology of the friars in fifteenth century England", (International Congress on Medieval Studies, Kalamazoo, 2015), has highlighted the involvement of mendicant medics in the treatment of female patients, as demonstrated by the *Tabula medicine*, (1416-25); see also P.M. Jones, "The *Tabula Medicine*: An Evolving Encyclopaedia", in A.S.G. Edwards (ed.), *Regional Manuscripts 1200-1700* (London, 2008), 60-85; P. M. Jones, "Mediating Collective Experience: the *Tabula Medicine* (1416-1425) as a Handbook for Medical Practice", in F.E. Glaze and B. Nance (eds), *Between Text and Patient: The Medical Enterprise in Medieval & Early Modern Europe* (Florence, 2011), 279-307.

<sup>40</sup> Green, *Making Women's Medicine Masculine*, especially at 23, 32, 201, c.2, c.4, c.5; M.H. Green, and L.R. Mooney, 'The Sickness of Women', in M.T. Tavormina (ed.), *Sex, Aging and Death in a*

when, as in the present case, the treatment was not gynaecological, there is evidence of consciousness of the risk posed to women by medical men. Some instructional literature acknowledges the possibility or risk of sexual misbehaviour.<sup>41</sup> Warnings against such conduct were not, however, straightforwardly moral injunctions, nor indications of overriding concern for the potential harm to female patients treated by men, but might be intended to avoid the possibility of annoying the male head of the household, with whom the primary relationship was understood to be. Likewise, the injunction to 'abstain from harlotry' was based on the risk of adverse effects to the medical man's self-interest, rather than any concern for the women involved: 'for if you indulge in harlotry in private, you may be dishonoured in public'.<sup>42</sup> Furthermore, while some literary, hagiographic and other non-medical sources show evidence of concern with the possibility of sexual misconduct in these situations,<sup>43</sup> the medical man is not the major focus of accusations of abuse of

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*Medieval Medical Compendium, Trinity College Cambridge MS R.14.52, its texts, language and scribe*, 2 vols (Tempe AZ, 2006) vol. 2 pp 455-568. See also M.C. Flannery, 'Emotion and the ideal reader in Middle English gynaecological texts', in R. Falconer and D. Renevey (eds), *Medieval and Early Modern Literature, Medicine and Science* (Tübingen, 2013). 103-115; E Power, 'Some women practitioners of medicine in the Middle Ages', *Proceedings of the Royal Society of Medicine* 15 no 6 (1922) 20-3.; L. Munster, 'Women doctors in medieval Italy', *Ciba Symposium* (English ed.) 10 no 3 (1962) 136-40; 139; C. Talbot, 'Dame Trot and her progeny', *Essays and studies* (The English Association) ns 25 (1972), 1-14. 11-13; H. Denifle (ed.), *Chartularum Universitatis Parisiensis* (Paris 1891-9) 2:267.

<sup>41</sup> Warnings against misbehaviour with a patient's female (and sometimes male) dependents can be found in the Hippocratic tradition and early medieval Latin sources, with some also warning against being 'lewd', or a 'woman lover' more generally: Wallis, *Medieval Medicine*, 432, 434, 435, 454; L.R. Hasday, 'The Hippocratic Oath as literary text: a dialogue between law and medicine', *Yale Journal of Health Policy, Law and Ethics* 2 (2013) 1- 26, 1; L. Edelstein, *The Hippocratic Oath: Text, Translation and Interpretation* (Baltimore, 1943) 3. One late-thirteenth century text on surgery saw it as characteristic of the ideal surgeon that he neither spoke 'ribaldry' in a sick man's house, nor spoke 'with any woman in folie' there, though there is nothing specific about his sexual conduct as opposed to words, nor about behaviour towards female patients: R. von Fleischhacker (ed.), *Lanfrank, Science of Chirurgie* ed EETS CII (1894), 8-9; Rawcliffe, *Medicine and Society*, 134; B. Grigsby, 'The social position of surgeons in London 1350-1450', *Essays in medieval studies*, 1996, 71-80. John of Ardene's fourteenth-century advice to physicians was more specific, saying that they should not 'look too freely on the lady or the daughters or other fair women in great men's houses'. nor should they 'kiss them, nor touch their breasts, hands or private parts openly or secretly': Wallis, *Medieval Medicine*, 460; D. Power (ed.), John Ardene, *Of the Wound of Fistula in Ano and of the Physician's behaviour* (London, 1910), 1-8. Note also the idea of the therapeutic value of 'the touch of young girls' or the blood of virgins: Wellborn, 'The errors of the doctors', 53; A.G. Little and E Withington (eds) *De retardatione accidentium senectutis cum aliis opusculis de rebus medicinalibus* (Oxford, 1928), 150-79, no. 65; P.M. Jones, 'Herbs and the Medieval surgeon', in P. Dendle and A. Touwalde (eds), *Health and Healing from the Medieval Garden* (Woodbridge, 2008), 170.

<sup>42</sup> Wallis, *Medieval Medicine*, 460; Power (ed.), John Ardene, *Of the Wound of Fistula in Ano and of the Physician's behaviour*, 1-8. It has been demonstrated that neither concerns about women's shame, nor the risk of harm to them, nor fear of reputational damage generally deterred male practitioners from becoming involved in the study, description and practice of women's medicine: Green, *Making Women's Medicine Masculine*.

<sup>43</sup> For a British parallel to the *Plomet* case, see the explanation for the conception of St Kentigern, given in the twelfth-century *vita* by Jocelin of Furness, involving a drug called 'letargion', which

privileged access to women, and nor is lechery his characteristic vice.<sup>44</sup> Thirteenth-century English legal treatises confine their concern about medical men's misconduct to the possibility of their causing death or maiming their patients, and false claims of expertise, rather than considering sexual predation,<sup>45</sup> and, as will be discussed further below, in the medieval English plea rolls, *Plomet v. Worgan* is an isolated case of a medical man's deliberate abuse of privileged access in this fashion.<sup>46</sup>

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allowed a man to impregnate the saint's mother without her knowledge. Although it is not a medical man who was said to be at fault here, a link is made with 'physicians' (who know of the drug and are said to have named it) and the particular effects mentioned (including unawareness of incisions made in the limbs) suggest a surgical use reminiscent of Voigts-Hudson dwale: A. Penrose, *Jocelin of Furness, Vita Kentegerni* (Edinburgh, 1874), 163; M. Cowan, 'A Contested Conception: Jocelin of Furness and the local traditions about St Kentigern in twelfth-century Glasgow' (forthcoming). I am grateful to Professor Cowan for alerting me to this narrative and allowing me to see this paper. On letargion, see also T. Husemann, 'Die Schlafschwämme und andere Methoden der allgemeinen und örtlichen Anästhesie im Mittelalter', *Deutsche Zeitschrift für Chirurgie* 42 (1896), 517 at 577, and T. Husemann, 'Weitere Beiträge zur chirurgischen Anästhesie im Mittelalter,' *Deutsche Zeitschrift für Chirurgie*, 54 (1900), 503-550 at 517. See also the narrative concerning a jealous young man's observation of a Jewish physician, called to attend a young girl, and allowed to make a physical examination of her, with sexual overtones: Shem Tov ben Yosef Falaquera, *Sefer haMevaqqesh* (The Book of the Seeker), in H. Schirmann, *HaShirah ha'ivrit bisefarad uveprovans* (Jerusalem and Tel Aviv, 1960), Volume II, part I, pp. 329-42, 332-34; J. Shatzmiller, *Jews, Medicine and Medieval Society* (Berkeley, 1995), 101-2. I am grateful to Susan Einbinder for this reference and for her translation of the text. See also the much older (false) accusation of abuse of intimate access to women to 'corrupt' them, made against the medic Agnodice (in fact a disguised female): Green, *Making Women's Medicine Masculine*, 31; P.K. Marshall (ed.), *Hyginus, Fabulae*, (Stuttgart, 1993), 196-7.

<sup>44</sup> Many literary sources deal with greed, incompetence and trickery by medical men, but trickery generally relates to the efficacy of their cures, rather than the obtaining of sexual access to women: Wallis, *Medieval Medicine*, c. 15; Rawcliffe, *Medicine and Society*, 115-6; E.J. Kealey, *Medieval Medicus: a social history of Anglo-Norman medicine* (Baltimore and London, 1981), 37. Lechery (including obtaining sex by deception) was the characteristic vice of the literary cleric or student rather than the medic. See, e.g. R. Eichmann, 'The anti-feminism of the fabliaux', *French Literature Series VI* (1979), 26-34, 30; J. Méndez, 'The bad behaviour of friars and women in medieval Catalan fabliaux and Chaucer's Canterbury Tales', *Skepsis* 3 (2010) 52-63, 54; Kieckhefer, 'Erotic magic', 46; G.H. McKnight (ed.), *Middle English Humorous Tales in Verse* (Boston, 1913), 1-24; KB 27/676 Rex m. 2d, P. Maddern, *Violence and Social Order: East Anglia 1422-1442* (Oxford, 1992), 102. Despite the medical imagery, the lecherous friar in *Piers Plowman*, Passus XX, 348, appears in a discussion focusing on purported healing of the soul rather than the body: see, e.g. A.V.C. Schmidt, *Earthly Honest Things: Collected Essays on Piers Plowman* (Newcastle, 2012), 115-6. For condemnation of medical practice from a different tradition, highlighting concerns about ignorance and mistakes or deception over drugs, see Wellborn, 'The errors of the doctors', 53.

<sup>45</sup> See Butler, *Forensic Medicine*, 250-3; *Bracton* II, 356; *Britton* I:34; *Mirror of Justices*, 137. Later common law concerns are with negligent treatment and with fees, rather than deliberate harm, or sexual predation: see, e.g., R.C. Palmer, *English Law in the Age of the Black Death 1348-81*; S.M. Butler, 'Medicine on trial: regulating the health professions in late medieval England', *Florilegium* 28 (2011) 71-94. Early fourteenth century York regulations showed concern with dishonesty and poor standards: Prestwich, *York Civic Ordinances 1301*, 17-18. The *Little Red Book of Bristol's* fifteenth century ordinances showed a concern with secretive practice: Rawcliffe, *Medicine and Society*, 135; F.B. Bickley (ed.), *The Little Red Book of Bristol* two vols, (London, 1900) II 135-41; 152-7.

<sup>46</sup> The only other pre-modern allegation that a medical man used drugs to obtain sex from his patient which I have found in English secular legal records is from the Star Chamber in 1613, and has important points of difference from *Plomet v Worgan*: *Richard Androwes v John Haunce and William*

## Gender and healthcare

*Plomet v. Worgan* raises some interesting issues in relation to the portrayal, performance, and, perhaps, the reality of medieval gender roles and relations in the sphere of health care.<sup>47</sup> The case, as recorded, concerned a male 'surgeon' and a female patient. While it is a single example, the fact that the Herefordshire jury does not appear to have treated the consultation of a male surgeon by a female as in any way odd or improper is some evidence that it was not abnormal for men to act as surgeons to women in this milieu. This is in line with the findings of previous scholars that, even in the more intimate areas of obstetric or gynaecological practice, male practitioners seem to have been able to overcome perceived improprieties and to involve themselves in women's treatment, and women seem to have been prepared to allow them to do so.<sup>48</sup>

The records can also be interrogated for the hints they provide about the content of the male-surgeon- female patient relationship. There is, at times, an emphasis on the activity of the male medic and the passivity of the female patient. Thus, for example, it might be worth noting that we are told that Ralph gave Isabella the *dwoledreng* to drink, but not that she drank it. Some activity by the woman is acknowledged, in that she is shown travelling from Hereford to Ross. The language used in relation to this journey, however, casts doubt upon or negates the independence of her will: the

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*Pritchard* (1613) STAC 8/46/16, alleged that Androwes had signed a bond with Haunce for his wife's cure, Haunce stopped treating her properly, and attempted to have sex with her, using 'amatory potions', and 'inflaming philtres' to provoke her to 'unlawfull love' with him. When she still refused his advances, he attempted rape, but this failed because Mrs Androwes shouted out and a servant came to the rescue. For the use of 'philtres' to force a woman into marriage, see STAC 8/122/12. For the idea of love- or sex-facilitating magic, see Witchcraft Act 1542 (33 Hen. VIII c. 8) and for later indictments for the introduction of supposed aphrodisiacs into people's food: see, e.g. case of John Honey, junior, (1824) QS 1/10/581, Cornwall Record Office.

<sup>47</sup> While it may have been to Isabella's advantage to minimise her own active and willed participation in events, in conformity with approved gender roles, this does not mean that this account is inaccurate.

<sup>48</sup> See, e.g., M.H. Green, 'Women's medical practice and healthcare in medieval Europe', in J. Bennett et al., *Sisters and Workers in the Middle Ages* (Chicago, 1989), 39-78; 'Documenting medieval women's medical practice', in L. Garcia Ballester et al., *Practical Medicine from Salerno to the Black Death* (Cambridge, 1994) 322-52; Green, 'The possibilities of literacy', 22-3, Green, *Making Women's Medicine Masculine*; 'Moving from philology to social history: the circulation and uses of Albucasis's Latin Surgery in the Middle Ages', in Glaze and Nance, *Between Text and Patient*, 331-72; M. Cabré, 'Women or healers? Household practices and the categories of healthcare in late medieval Iberia', *Bulletin of the History of Medicine* 82 (2008), 18-51

journey is, arguably, portrayed as having been undertaken without full independence of will, because it is also noted that she goes in accordance with Ralph's advice, and she goes with him. These qualifications may well be taken to suggest that Ralph's assumed expertise and physical presence operated to lessen to some degree the independence of Isabella's action. Either Isabella's plaintiff, or the jury, or both, chose to emphasise the male medic's activity, and to play down the female patient's independent activity, in this episode. The extent to which this was an accurate portrayal of the parties' conduct and 'professional' relationship is, unfortunately, beyond recovery, but the case is at least suggestive of what was thought to be an acceptable or plausible version of events.<sup>49</sup>

However much it may have been played down, the fact of Isabella having undertaken the journey to Ross is of interest in that it suggests a woman taking an active role, not in the sexual misconduct which followed, but in her own healthcare. We might also note that Isabella is said to have approached Ralph for treatment, and to have covenanted with him - both of which suggest a high degree of autonomy in the sphere of healthcare. In this respect, she provides a good example of women's 'healthcare agency', contributing to the increasingly nuanced and sophisticated picture of medical practice and healthcare which is emerging from recent work taking us beyond the 'doctor-patient' binary.<sup>50</sup> Nevertheless, the idea that she deferred to Ralph's expertise and authority keeps the scope of Isabella's agency within bounds: she is certainly shown as occupying a subordinate role in relation to Ralph.

There are difficulties in using this case as a basis for more expansive statements or arguments about medieval gender. The nature of the source, and, in particular, the fact that what is left is not Isabella's own complaint, but her complaint mediated by a

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<sup>49</sup> We cannot be sure that the wording in the eyre roll follows that of Isabella's plaintiff, but it should be borne in mind that legal documents such as complaints and petitions were composed in order to present the facts of the case in as advantageous a light as possible, and there might be a particular need to play down the extent to which Isabella would be thought (like the Biblical Dinah: Genesis 34) to have brought misfortune upon herself with her independent action.

<sup>50</sup> See, e.g., Green, 'Women's medical practice'; 'Documenting medieval women's medical practice', in L. Garcia Ballester et al., *Practical Medicine from Salerno to the Black Death* (Cambridge, 1994) 322-52; M. Cabré, 'Women or healers? Household practices and the categories of healthcare in late medieval Iberia', *Bulletin of the History of Medicine* 82 (2008), 18-51; M.H. Green, 'Bodies, gender, health, disease: recent work on medieval women's medicine', *Studies in Medieval and Renaissance History*, third series vol. 2 (2005), 1-49. Note also the important work being done on the experience of illness, which has some relevance in this area: see, e.g. R. McNamara, 'The Sorrow of Soreness: Infirmary and Suicide in Medieval England', *Parergon* 31.2 (2014) 11-34; O. Weisser, 'Grieved and disordered: gender and emotion in early modern patient narratives', *Journal of Medieval and Early Modern Studies* 43 (2013), 247-73.



number of males - at least the jurors and the scribe, if not also other helpers in the preparation of the plaint - means that there are difficulties in identifying the point of origin of these ideas. It is neither possible nor appropriate to say whether they are to be understood as male constructions of gendered behaviour, or also as ideas internalised by Isabella herself.<sup>51</sup>

### Isabella Plomet's legal action

Isabella Plomet's case was brought to the eyre held in Hereford, between 8<sup>th</sup> June and 26<sup>th</sup> July, 1292, before John de Berewyk, Thomas de Normanvill, John de Lithegreyns, Peter Molore and Hugh de Cave, justices itinerant.<sup>52</sup> It is recorded as a plaint (*querela*). This was one of several ways of bringing a grievance before the royal courts,<sup>53</sup> and, in contrast to other legal procedures, allowed the aggrieved party a considerable degree of freedom in the way in which the grievance was formulated.<sup>54</sup>

Isabella's objections to her treatment by Ralph might be prosecuted as rape today, depending on the view taken of the effects of *dwoledreng*, and the extent to which it rendered her incapable of making a choice as to whether or not to have sex.<sup>55</sup> While late thirteenth century England afforded routes for victims and for the community to proceed against a rapist, as a felon, with the possibility of a conviction and capital punishment, however, it appears to have been very difficult to secure a conviction, and it is highly unlikely that this would have been a successful route for Isabella.<sup>56</sup>

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<sup>51</sup> An additional complication is the area of potential overlap between expectations of women and expectations of patients.

<sup>52</sup> JUST 1/302 m. 1; *CPR 1281-92*, 485; D. Crook, *Records of the General Eyre* (London, 1982), 175.

<sup>53</sup> See Crook, *Records of the General Eyre*, 7; H.M. Cam, 'Studies in the Hundred Rolls', 57; A. Harding, 'Plaints and bills in the history of English law, mainly in the period 1250-1330', in D. Jenkins (ed.), *Legal History Studies 1972* (Cardiff, 1975), 65-86, 68.

<sup>54</sup> Plaints were complaints of wrongs done, made to royal justices. The complaints did not have to be made in the highly prescriptive terms of common law writs, and nor did they have to be in Latin: see: W.C. Bolland, (ed.), *Select Bills in Eyre AD 1292-1333* (London, 1914); W.C. Bolland (ed.), *Eyre of Kent 1313-14* (London, 1912) xxi-xxx; H.G. Richardson and G.O. Sayles (eds), *Select Cases of Procedure without Writ temp. Henry III* (London, 1941); A. Musson, *Public Order and Law Enforcement*, 175, Harding, 'Plaints', 66-8, 75-7;

<sup>55</sup> *R v Bree* [2007] 2 Cr.App.R. 13 at 39; Sexual Offences Act 2003 ss. 75(2)(d) and 75(2)(f).

<sup>56</sup> See, e.g., K.M. Phillips, 'Written on the body: reading rape from the twelfth to the fifteenth century', in N.J. Menuge (ed.), *Medieval Women and the Law* (Woodbridge, 2000), 125-44, 128; P.J.P. Goldberg, *Women in England c. 1275-1525*, (Manchester, 1995), 42, B.A. Hanawalt, 'Whose story was this? Rape narratives in medieval English courts', in Hanawalt, *Of Good and Ill Repute* (Oxford, 1998), 124-51, 135-6; C. Saunders, *Rape and Ravishment in the Literature of Medieval England*

Despite the fact that she alleged sex contrary to her will, it would be unlikely that she would have been able to satisfy the necessary officials and a jury that this drug-assisted non-consensual sex was sufficiently forceful to fit the paradigm of felonious rape, so that alternatives are likely to have been attractive.<sup>57</sup> There is no sign that Isabella had been able to demonstrate physical violence against her person, beyond the penetration. Force, however, was a required element of rape in several definitions, with claimants being expected to be able to show torn clothing, and blood. In contrast to the attenuated meaning which came to be allowed for the requirement of 'force and arms' in the context of trespass actions, real and demonstrated force was expected in the context of felonious rape.<sup>58</sup> While the woman's will or (lack of) consent was mentioned in some legal definitions, this cannot be equated with the modern threshold for willed action or agreement,<sup>59</sup> and even a low level of acquiescence would probably have made a rape conviction unlikely. The fact that Isabella had gone some considerable distance to Ross with Ralph, without apparent coercion, and had presumably consented to some bodily touching, might well have damaged her chances of securing his conviction as a rapist.<sup>60</sup> It should also be noted that Isabella did not allege that she had been a virgin

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(Woodbridge, 2001), 33-75; K.M. Phillips, 'Four Virgins' Tales: Sex and Power in Medieval Law', in A. Bernau (ed.), *Medieval Virginites* (Cardiff, 2003), 80-101; R.D. Groot, 'The crime of rape temp. Richard I and John' *Journal of Legal History* 9 (1988) 324-34; J.M. Carter, *Rape and Medieval England: an Historical and Sociological Study* (London, 1985); H. Kuemper, 'Learned men and skilful matrons: medical expertise and the forensics of rape in the Middle Ages', in Turner and Butler, *Medicine and the Law* c.3.

<sup>57</sup> Note also that appeals of felony did not give monetary compensation to the appellor: Harding, 'Plaints', 71. The starting and later abandonment of an appeal might be a way of obtaining financial compensation or other settlement, but both appeals and settlement were declining in the thirteenth century: D. Klerman, 'Settlement and the decline of private prosecution in thirteenth century England', *Law and History Review* 19 (2001), 1-65.

<sup>58</sup> *Glanvill* XIV, vi; *Bracton* II, 414; *Fleta* Book I c. 33 (though here the man coming *cum vi sua* appears to mean helpers as opposed to personal violence, and consent is mentioned); *Britton* book I c. xv (referring to 'violence', and saying nothing about consent or will). Both force/violence and lack of consent are mentioned in the exemplar in J.M. Kaye (ed.), *Placita Corone* (London, 1966), 7-8. For a suggestion that consent was more important in literary than in legal sources, see, e.g., C. Saunders, 'A matter of consent: Middle English romance and the law of *raptus*' in Menuge, *Medieval Women and the Law*, 105-124, 106.

<sup>59</sup> See, e.g., Seabourne, *Imprisoning Medieval Women*, c.7; E. Bennett Histed, 'Medieval rape: a conceivable defence' *Cambridge Law Journal* 63 (2004) 743-69; C. Dunn, *Stolen Women in Medieval England* (Cambridge, 2012), cc. 1 and 2.

<sup>60</sup> See Hanawalt, 'Rape Narratives', especially at 135-6. Fourteenth century authority also suggests it was worth arguing that the fact that a man was consulted as a doctor barred an appeal of mayhem: KB 27/575 m.19; KB 27/399 m. 71d; Palmer, *Black Death*, 342.

before Ralph's actions. Virginity, while not strictly necessary for a rape conviction, was certainly helpful.<sup>61</sup>

We might wonder why Isabella did not use one of the 'ready-made' common law writs to seek redress from Ralph. One possibility might seem to have been the writ of trespass *vi et armis* (with force and arms), seeking compensation for wrongful touching.<sup>62</sup> Cases brought using this form of action very rarely deal explicitly with any sort of sexual assault on women, however, though it does not seem to have been impossible to proceed by trespass action in this area.<sup>63</sup> In the specific context of this grievance, Isabella's chances of bringing a writ of trespass *vi et armis* are likely to have been hampered by the element of consent to touching in the situation which was noted above.<sup>64</sup> An important development both for the law of trespass and for the liability of medical professionals, the appearance of actions by common law writ of trespass on the case, explicitly based on an undertaking which had not been fulfilled properly or at all, and which might conceivably have been of use to Isabella, would come only in the fourteenth century.<sup>65</sup> In 1292, another possible writ in the medical malpractice area was covenant, a contractual action.<sup>66</sup> While the record did mention Ralph having promised (*convencionavit*) to cure Isabella, however, there

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<sup>61</sup> See, e.g. Phillips, 'Written on the body', *Bracton* II, 414-15.

<sup>62</sup> S.F.C. Milsom, 'Trespass from Henry III to Edward III Part I', *Law Quarterly Review* 74 (1958) 195-224, 207; *Bracton*, f. 115; D.J. Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford, 1999), 41. Medical practitioners could be held to account for battery outside the treatment context: see, e.g. Talbot and Hammond, *The Medical Practitioners*, 6; C.A.F. Meekings (ed.), *Crown Pleas of the Wiltshire Eyre of 1249* (Devises 1961), 226-7; e case mentioned in G. Dumas, 'Les femmes et les pratiques de la santé dans le "Registre des plaidories du Parlement de Paris, 1364-1427"', *Canadian Bulletin of Medicine* 13 (1996) 13-27, 23 (AN, mardi, 3 juin 1410, Xla 4789, folio 360 vo).

<sup>63</sup> It may be that others of the many terse records of assault *vi et armis* cases hide such facts behind their stereotyped allegations, but this is far from clear. Actions for abduction of a wife with her husband's goods (see Seabourne, *Imprisoning Medieval Women*, 89-95, 120-2) might sometimes have involved sexual assault, but removal rather than sexual contact is emphasised.

<sup>64</sup> See, e.g., Ibbetson, *Historical Introduction*, 42; Palmer, *Black Death* 159-66; Milsom, 'Trespass', e.g. at 219. J.H. Baker, *Introduction to English Legal History* (London, 2002), 329 states that a surgeon who bungled an operation could not be sued in the common law courts for straightforward trespass to the person. Presumably consent to treatment made it impossible to make out a plausible case for force and arms and for the conduct being against the king's peace. Note that there is no allegation of force in Isabella's case: it is the lack of consent which is emphasised: the penetration is *contra voluntatem suam*.

<sup>65</sup> See, e.g. Baker, *Introduction*, 329; *Stratton v Swanlond* (1374) *Seipp* 1374.011 (references to *Seipp* are to Year Book cases in the online catalogue 'Seipp's Abridgement', at <http://www.bu.edu/law/seipp/>); *Bradmedewe v Rushenden* (1364) 103 SS 422; Palmer, *Black Death*, 353; Talbot and Hammond, *Medical Practitioners*, 6, 74, 119, 136, 137, 140, 141, 144, 150, 154, 213. Trespass on the case for deceit was known from the late fourteenth century, but I have not found an example of its use in a context analagous to that of *Plomet v Worgan*.

<sup>66</sup> See Ibbetson, *Historical Introduction*, 88; A surgeon who had guaranteed a cure and had failed to provide it could be sued in covenant: *Seipp* 1321.315ss; *Warner v Leech* (1330) JUST 1/23 m.93.

was probably a good reason for Isabella's choice not to sue him by writ of covenant: in particular, this would have been a more costly undertaking, and there may also have been problems with proof, if, as seems likely, Ralph carried out his activities in secret.<sup>67</sup>

Practical and procedural problems with these alternatives, then, are likely to explain why Isabella opted to bring her grievance before the court by plaint, a comparatively unfettered type of action, in which many of the usual common law rules and strictures did not apply. The rolls of plaints from the 1292 Herefordshire eyre, for example, included complaints of: assault with an axe (causing injuries that probably did not amount to mayhem), unlawful distraint, unlawful imprisonment and detention, debt, false imprisonment, assault, being deceived into transferring land to a man whom the plaintiff thought would marry her, a woman unfairly losing her home, testamentary goods, annuity, leases; some matters, in other words, which might perhaps have been brought by common law writ, others which did not fit comfortably into existing formulae.<sup>68</sup> In addition to this wide potential scope, it might also be that bringing a plaint allowed Isabella to overcome any potential problems relating to the fact that the rape occurred in Ross, rather than Hereford.<sup>69</sup> The relative freedom given by the plaint to formulate one's own case allowed Isabella to diminish parts of the story likely to have been thought to damage her argument that she had been wronged. As has been shown in connection with other types of complaint and petition, female petitioners, or those formulating petitions for them, might choose to

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<sup>67</sup> The strict 'specialty rule' in covenant actions was not yet absolute, but Isabella may not have had the requisite 'suit' (transaction witnesses) either: Baker, *Introduction*, 319; Corbet v Scurry JUST 1/740 m. 42d; YB 20 & 21 Edw I RS p 223; D.J. Ibbetson, 'The action of covenant in the reign of Edward I' (1986) 4 *Law and History Review* 71; R.C. Palmer, *The County Courts of Medieval England 1150-1350* (Princeton, 1982) 198-215; 'Covenant, justices writs and reasonable showings' (1987) 31 *American Journal of Legal History* 97; J.S. Beckerman, 'Procedural innovation and institutional change in medieval English manorial courts' (1992) 10 *Law and History Review* 197, 219-26; J. Barton, 'The medieval contract' in J. Barton, (ed.), *Towards a general Law of Contract* (Berlin, 1990), 15-37; P. Philbin, 'Proving the will of another: the specialty requirement in covenant', *Harvard Law Review* 105 (1992) 2001-20. For formal agreements for medical services, see, e.g. *Dauratus v Abbot of St Peter's, Gloucester* (1303) CP 40/146 m. 85d; *Magister Otto de Alemannia v Maugerus le Vavasur* JUST 1/1087 m.28d; JUST 1/1094 m. 28d; JUST 1/1100 m. 33d. See also J.B. Post, 'Doctor versus patient: two fourteenth century law suits', *Medical History* XVI (1972) 296-300.

<sup>68</sup> JUST 1/303 m. 75-77. Bolland, *Select Bills in Eyre* includes bills from a similar period, including debt, detainue, contract, trespass, negligence, illegal distress, wrongful imprisonment, abduction of ward, robbery and assault. Bolland, at xxviii, emphasises the use of bills by poor people. On the choice to proceed by bill or plaint, rather than otherwise, see G.O. Sayles (ed.), *Select Cases in the Court of King's Bench vol. IV: Edward II* (London, 1955), lxxxv; Richardson and Sayles, *Select Cases of Procedure without Writ*, cxiv.

<sup>69</sup> Another possibility is that this was a very recent occurrence, leaving insufficient time to get a writ, see Harding, 'Plaints' 66.

emphasise socially-acceptable constructions of themselves, their situation and their behaviour, presumably with some expectation that this would increase their chances of success.<sup>70</sup> In this case, as mentioned above, Isabella's own actions seem to have been minimised and Ralph's were the focus. If this was drawn from the original plaint, rather than emerging from the jury or scribe, it may have been calculated to be of some help in casting Isabella in the role of passive and innocent wronged woman rather than arguably willing participant or one who had only herself to blame for what had occurred.<sup>71</sup>

Isabella was not the only woman to have tried using the plaint as a way of seeking redress for sexual mistreatment, though success was often elusive. For example, at Berkshire in 1248. Matilda of Sundon complained that a manorial official had thrown her from her horse, robbed her, taken her away to the Hall where he 'forcibly lay with her', and kept her captive for some time.<sup>72</sup> We would probably also class as sexual assault the claim of Christian, widow of Adam Prudhomme of Newport, that Nicholas Brown the goldsmith of Bridgnorth, who accused her of having stolen his silver buckle, dragged her off to a house outside Bridgnorth, then stripped her naked, tore her hair and conducted a full body search, 'indecently', including 'even her secret parts', then, when he did not find the stolen buckle, he threw her out.<sup>73</sup> Plaints, then, allowed women the possibility of making slightly unusual claims, even if they were not always successful, giving the possibility of some sort of remedy for those who

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<sup>70</sup> See, e.g. Seabourne, *Imprisoning Medieval Women*, 130; C. Beattie, 'Your oratrice': women's petitions to the late medieval court of Chancery', in B. Kane and F. Williamson, *Women, Agency and the Law, 1300-1700* (Abingdon, 2013), c.1; G. Dodd, *Justice and Grace: private petitioning and the English Parliament in the late middle ages* (Oxford, 2007) c.9.

<sup>71</sup> Note that, in relation to the sexual misconduct itself, while *Concubuit cum ea* has linguistic overtones of mutuality, the possibility that the act should be so understood is minimised by the statement that the intercourse was against Isabella's will.

<sup>72</sup> The claim was only partially successful: Richardson and Sayles, *Select Cases of Procedure without Writ*, no 54.

<sup>73</sup> This claim was unsuccessful: Bolland, *Select Bills in Eyre*, 48. Stripping a woman is also part of the facts found in a plea from the eyre of London, 1276, though this matter was brought up by representatives of London wards, acting as a the jury, and not, apparently, the complainants. In *Hadestok v Montibus* (1276), M. Weinbaum (ed.), *The London Eyre of 1276* (London, 1976), plea 519, British Museum Add. Charter 5153 m. 19d, a man and his wife complained that another man had broken into their house, and had broken the woman's finger and done her 'other enormities' against the king's peace. The wards noted further details, including that the defendant had 'entered the house, closed the door and tore [the female complainant's] dress down to the navel, threw her to the ground'. The defendant then performed a further act, which Weinbaum translates as rape. The verb is *conculcavit*, which might indicate rape, in the sense of oppression, particularly if one notes the medieval jokes about this word which contained 'three obscene monosyllables in French' - see, e.g., J.M. Fyler, 'Language Barriers', *Studies in Philology* 112 (2015), 415-52, 422; but perhaps seems more likely to be a stamping or trampling. In any case, the stripping gives sexual overtones to the assault.

did not fit the paradigms of common law writs or who were at a disadvantage with regard to appeals and indictments for pleas of the crown.<sup>74</sup> Using a plaint gave Isabella her best chance of obtaining recognition that a wrong had been done to her, and of some compensation for her experience.<sup>75</sup> In addition, there might have been some satisfaction in seeing Ralph obliged to pay a sum to the king, and bound to keep the peace (because he had threatened her).<sup>76</sup>

In gaining compensation for sexual mistreatment, Isabella Plomet fits into a long-standing pattern, and one which was well-known to other contemporary legal systems.<sup>77</sup> As has been pointed out in several studies, it should not necessarily be assumed that a finding of wrongdoing and a financial award would be regarded as second-best to a conviction of felonious rape, which might satisfy thirst for vengeance, but would not necessarily help the wronged woman to regain her position in the community or the 'marriage market'.<sup>78</sup> If Isabella was still afflicted with some condition which limited her mobility, financial help might have been particularly desirable. Comparisons of Isabella's compensation with sums awarded for other wrongs to the person at a similar period suggests that permanent physical damage could result in considerably higher compensation.<sup>79</sup> Nevertheless, other compensation awards were lower,<sup>80</sup> and a mark was not a derisory sum.<sup>81</sup> Although

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<sup>74</sup> Harding, 'Plaints', 65, 68-71.

<sup>75</sup> It is unclear how Isabella managed to convince the jury that Ralph had in fact penetrated her.

<sup>76</sup> The sums of money and the obligation to keep the peace were secured by the pledges of named men. Isabella was to be compensated with one mark (13s 4d). Ralph seems to have paid up. He had to pay 40d to the king, see also JUST 1/302 m.101.

<sup>77</sup> See R.W. Ireland, *Land of White Gloves? A History of Crime and Punishment in Wales* (Abingdon, 2015), 11-22.

<sup>78</sup> *Bracton* II.418; Klerman, 'Settlement and decline', R.D. Groot, 'The jury in private criminal prosecutions before 1215', *American Journal of Legal History* 27 (1983) 132-7, 'The crime of rape', 327, C. Dunn, *Stolen Women in Medieval England: rape, abduction and adultery 1100-1500* (Cambridge, 2012), 14, 74, 76.

<sup>79</sup> For higher sums claimed, see, e.g. Bolland, *Select Bills in Eyre*, no.s 26, 34, 66, 116. For larger sums awarded, see the 20s for a woman beaten so that blood issued from all parts of her body (Bolland, op. cit. no. 54). 20s for inflicting a head wound (1292 eyre of Shropshire, JUST 1/741 m. 52); £100 claimed, £20 awarded for amputation of the left arm and right thumb: KB 27/134 m. 16d.

<sup>80</sup> For example, 40d was awarded for hitting a man in the head with a bow: JUST 1/804 m. 43d; 11s for an attack on a woman: JUST 1/373 m. 89; 2s for a woman pushed into the mud JUST 1/306 m. 4; 10s for an assault JUST 1/306 m.4; ½ m for bad beating JUST 1/373 m. 96; 2s for a beating: JUST 1/375 m. 82; 40d for hitting a man in the head with a bow JUST 1/804 m. 42d; half a mark dams for taking by hood, making nose bleed: JUST 1/373 m. 90; ½ m for bad beating JUST 1/373 m. 96; JUST 1/375 m. 81; 2s for the same: JUST 1/375 m.82.

<sup>81</sup> Note that sums to be paid were not calculated on the basis of the damage alone, but also took into account to some extent the worth of the offender. On the fixing of damages, see, e.g., Ibbetson, *Historical Introduction*, 56. Exactly what the money was seen to represent in this case, whether physical loss or damage, damage to honour, future economic loss due to dishonour or pollution, or some combination of these, is unclear.

Isabella received some compensation, and Ralph some punishment, however, the limited nature of the remedy is also apparent: there was nothing in the judgment which was protective of other potential patients, nothing to stop Ralph carrying on acting as a surgeon. Ralph's reputation may have been affected by the case, but there is no sign of the deliberate publicity and humiliation meted out to at least one incompetent claimant to expertise in surgery in later fourteenth-century London.<sup>82</sup> Given that control of the profession, trade or mystery of surgery was patchy or non-existent at this point outside larger urban centres, there was no professional or trade body to which Isabella could appeal, or which could take action against miscreants like Ralph.<sup>83</sup>

### Contemporary attitudes to sexual misconduct

*Plomet v Worgan* is worth noting as an example of a woman, a jury and the common lawyers involved agreeing that the law should afford some remedy in a case of drug-facilitated sex contrary to the will of the woman.<sup>84</sup> While the unwillingness of juries to convict men for the capital felony of rape is well known,<sup>85</sup> this case shows a glimpse of a world which was not always as dismissive of the sexual mistreatment of women as might be expected from that fact. It suggests that, while capital punishment might have been considered too harsh a penalty for sexual violation, such violation might receive some legal response when jurors chose to see the complainant in a favourable light, or the accused in an unfavourable light, or both.<sup>86</sup> The case was not singled out as anything remarkable by the compilers of the medieval Year Books, which may be some indication that the Herefordshire jury's view of sexual

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<sup>82</sup> S. Young, *Annals of the Barber-Surgeons of London* (London, 1890), 37-8; London, *Letter Book H*, 145. Roger Clerk, whose attempted cure had involved placing a piece of parchment with holy words, wrapped up in cloth of gold, around the patient's neck, was ordered to be paraded through London with signs marking him out as a cheat and a medic, and rough music.

<sup>83</sup> Rawcliffe, *Medicine and Society*, c.6, 126, M.R. McVaugh, 'Surgical education in the Middle Ages', *Dynamis*, 20 (2000); Butler, *Forensic Medicine*, 14-15.

<sup>84</sup> See also the petition SC8/196/9798 (c. 1286-c.1290) by 'Wesebel de Skenfrith', claiming that James del Escheker raped her, having tricked her into being alone with him, and having overcome her anticipated objection by leading her to believe that he would marry her. Wesebel, like Isabella Plomet, sought a remedy outside felonious rape and trespass *vi et armis*.

<sup>85</sup> See above note 56, and Hanalwalt, 'Rape Narratives', 136; JUST 1/327 m.8.

<sup>86</sup> We cannot, of course know what local reputations or rivalries might lie behind this case and its result.

misbehaviour was not seen as untenable.<sup>87</sup> The fact that we can see this view at this particular point in time is partly, no doubt, an evidential and procedural issue, with the availability of the plaint and the recording of plaints in eyre rolls allowing us an opportunity to see somewhat more clearly part of the spectrum of attitudes to sexual misconduct which might not have been entirely new, but which was not otherwise visible. It is also, however, worth considering other, broadly contemporary, legal changes which suggest a particular concern with, or interest in, sexual misconduct, in the latter thirteenth century.

This was a time of important statutory intervention in relation to women, as rape and ravishment offences concerning wives, nuns and other women were being defined.<sup>88</sup> Such developments cannot be taken to have been prompted by a concern for women in themselves,<sup>89</sup> such as might suggest a direct link with the *Plomet* case, but it may not be too far-fetched to see this case of evidence of consideration of the boundaries of appropriate sexual conduct fostered by the expansion of the common law's involvement in this area. Other cases in the 1292 Herefordshire eyre rolls show engagement with difficult issues involving women and sexual conduct in a broad sense, such as abortion, adultery and fraudulent promises of marriage.<sup>90</sup> In this context, it is, perhaps, less surprising to see the appearance in the rolls of a case like *Plomet v Worgan* involving a potentially complex point of law relating to sexual conduct.

As important an issue as why the case occurred when it did is that of why it did not lead to further, similar cases. Despite the acceptance here that Isabella Plomet deserved some legal redress, and despite awareness that intoxicants could be used

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<sup>87</sup> A.J. Horwood, *Year Books of the Reign of Edward I, Years XX and XXI (1292-1293)* (London, 1866). Although the reports focus more on cases brought by writ than on other forms of proceeding, they do consider at least one case brought by plaint: *Seipp* 1292.101rs. On the manuscript, see P. Brand, *Earliest English Law Reports vol. I: Common Bench reports to 1284*, (London, 1995), xxvii-xxxiii. On the Year Books, see, e.g., Brand, *The Earliest English Law Reports vol 1*, introduction; F. W. Maitland, 'Of the Year Books in general', in *Year Books of 1 and 2 Edward II* (London, 1903), ix-xx; Baker, *Introduction*, 178-82 and 192-3.

<sup>88</sup> See Seabourne, *Imprisoning Medieval Women*, 89-97. Note also the contemporary influx of canon law thinking and terminology in this area: see Dunn, *Stolen Women*, 27-9.

<sup>89</sup> See Seabourne, *Imprisoning Medieval Women*, c.4.

<sup>90</sup> JUST 1/302 m.85; JUST 303 mm.24, 77. See also the successful plaint by a woman concerning a malicious ecclesiastical case brought against her daughter, who had had a chaplain's baby, and which had resulted in their eviction: JUST 1/302 m.,76d JUST 1/303 m. 75d.



to take advantage of people in various ways, including sexually,<sup>91</sup> I have found no other medieval legal accounts or complaints of drug- or anaesthetic-facilitated sex, and nor are there any known legal condemnations of the use of more readily obtainable substances - in particular, alcohol - to obtain sex, though later medieval Year Books show some consideration of inebriation and responsibility, for example drawing a distinction between the mental states of insanity (which affected whether one's acts were to be deemed one's own) on the one hand, and, on the other hand, drunkenness and physical illness,<sup>92</sup> and discussion of the effect of drunkenness on agreements to pay money,<sup>93</sup> and plea rolls and coroners' rolls contain examples of inebriation as a factor in accidental death.<sup>94</sup> Whether this later lack of interest in men obtaining sex through substance-induced incapacity points to a limited occurrence of such facts, or to prevalent ideas of gender and sexuality which categorised the woman's normative role in sex as passive so that a move from passivity to incapacity did not seem a particular shock or abuse, is a fascinating matter, but one requiring a debate longer than space permits in this article.<sup>95</sup>

That it should not be easy to see from this case clear indications of thought on issues such as abuse of position and expertise for sexual gratification, consent and intoxication is hardly surprising, given the brief nature of the records, and the difficult

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<sup>91</sup> The use of intoxicants to gain an advantage over somebody else was well known in medieval England: see, e.g. Roger Mortimer's 1323 escape from the Tower of London by drugging guards: *Placitorum Abbreviatio*, 343; CCR 1323-7, 13, 132. Causing inebriation to facilitate a crime was considered in relation to victims of theft in fifteenth century Chancery petitions, C 1/15/85 and C 1/22/193 but I have found no similar cases in the context of rape. The use of alcoholic inebriation to facilitate sex was known from the Bible story of Lot and his daughters: Genesis 19: 30-38.

<sup>92</sup> *Seipp* 1461.005.

<sup>93</sup> *Seipp* 1459.003, 1472.030.

<sup>94</sup> See, e.g. JUST 1/166 m.41; JUST 2/67 m. 6. Note that the use of supposedly aphrodisiac substances to obtain sex is not found in medieval common law records or reports. This may be explained, at least in part, by the apparent medieval understanding of such substances as stimulants rather than incapacitators: see, e.g. B.P. McGuire, 'In search of the good mother: twelfth century celibacy and affectivity', in C Leyser and L Smith (eds), *Motherhood, Religion and Society in Medieval Europe 400-1400* (Ashgate, 2011). c5, 97; W. Stokes (ed.), *Anecdota Oxoniensia Lives of Saints from the Book of Lismore* (Oxford 1890), 192; J. Tippetts Schulenburg, 'Saints and sex ca 500-1100: striding down the nettled path of life', in J.E. Salisbury (ed) *Sex in the Middle Ages: a book of essays* (New York, 1991), 203-231, 223; R. Kieckhefer, 'Erotic magic in medieval Europe' in Salisbury, *Sex in the Middle Ages*, 30-55, 30, 46; C. Rider, 'Women, men and love magic in Late Medieval English Pastoral Manuals', *Magic, Ritual and Witchcraft* 7 (2012) 190-211; J. Evans, *Aphrodisiacs, Fertility and Medicine in Early Modern England* (Boydell, 2014), 1-28. This view would mean that love potions and magic would be less likely to fit in with ideas of force and overborne consent than would an incapacitating drug. For an interesting possible artistic parallel to Ralph's use of *dwoledreng* to obtain sex, see L.L. Holland, 'Medieval date rape in the *Carmina Burana*?': <http://www.camws.org/meeting/2008/program/abstracts/04c6.Holland.html>.

<sup>95</sup> See, e.g., R. Mazo Karras, *Sexuality in Medieval Europe: doing unto others*, second edn (London, 2005), 3.

and contested nature of ideas about responsibility, in the medieval period and subsequently. There are several medieval discussions about a person's responsibility for actions done whilst unconscious or asleep, or whilst under diabolic compulsion, and, while a clear consensus is difficult to discover, there appears to have been a reluctance to see people claiming such impairment as wholly without guilt, with questions being asked as to whether they somehow inculpated themselves by consenting to the action - beforehand, at the time or subsequently.<sup>96</sup> Issues of consciousness, intoxication and rape remained unclear for centuries. While the legal definition of rape was held to include a requirement of force (as opposed to 'mere' lack of consent), and evidence of resistance was expected, there was a difficulty in saying that a woman who was either unconscious or incapable of resistance could be raped, since force would not be necessary, nor resistance possible.<sup>97</sup> Once consent rather than force came into greater prominence in the legal definition, there was a range of views on how incapacitated a woman had to be before penetrating her necessarily amounted to rape.<sup>98</sup> Such matters remain problematic at the academic, policy and practical levels.<sup>99</sup>

<sup>96</sup> G.R. Evans, *Law and Theology in the Middle Ages* (London, 2001), 16; Canon 15 of the second Lateran Council 1139; Gratian, *Decretum* I Distinction VI, 2; Aquinas, *STII IIae*, qq. 149, 150.

<sup>97</sup> Force was a required element of rape in several definitions, being mentioned in *Glanvill* XIV, vi, *Bracton* II, 414, *Fleta* Book I c. 33 (though here the man coming *cum vi sua* appears to mean helpers as opposed to personal violence), *Britton* book I c. xv (referring to 'violence', and saying nothing about consent or will), though the later history of this requirement is not straightforward - not being found in major treatises of the seventeenth century, (for example, Hale (1 H.P.C. 628), Coke, 3 *Inst.* 60), then coming once more to the fore in the eighteenth and early nineteenth century: G. Jacob, *Laws of Appeals and of Murder*, (London, 1719), 93; T. Wood, *An Institute of the Laws of England* 3<sup>rd</sup> edn 1724) 361, W. Hawkins, *A Treatise of the Pleas of the Crown* 2 vols, 6<sup>th</sup> ed (London, 1777), book 1 c. c.41 s.1; Sir E.H. East, *Pleas of the Crown* (London, 1803) I, 434. Despite the lack of a force requirement in legal theory in the seventeenth century, however, note that some cases insisted on proof of force: see, e.g. *R v Hugh Evise* (1688) t16880531-26 (Old Bailey); G. Walker, 'Rape, acquittal and culpability in popular crime reports in England c. 1670-c.1750', *Past and Present* 220 (2013) 115- 142, 128. *R v Camplin* (1845) 174 ER 1016 finally came down against a requirement of force and resistance, though it was sometimes ignored afterwards: S. Edwards, *Sex and Gender in the Legal Process* (London, 1996), 337; *R v Rudland* (1865) 176 ER 661. For considerably later cases in which medical men obtained sex through deception rather than the use of drugs, see *R v Case* (1850) 169 ER 361; 1 Den CC 580; *R v Flattery* (1877) 2 QBD 410.

<sup>98</sup> See, e.g., *R v Stanton* (1844) 174 ER 872; J. Bourke, *History of Rape*, 54-7, 59; J. Snow, 'Further Remarks on the Employment of Chloroform by Thieves', *London Medical Gazette*, xlv (1850) 835-6. Reported cases suggest views of the effects of substances such as laudanum which appear to the modern reader to muddy the waters between exciting the woman to sexual activity and rendering her incapable of resisting: see, e.g., 'Law Intelligence', *Morning Post* 3/8/1818, *R v Shipman*, *R v Camplin* (1845) 174 ER 1016.

<sup>99</sup> See, e.g., E. Finch and V.E. Munro, 'The Sexual Offences Act 2003 : intoxicated consent and drug-assisted rape revisited', *Criminal Law Review* (2004), 789-840; 'The boundaries of intoxicated consent' *Criminal Law Review* (2003) 773-87; 'The demon drink and the demonized woman: socio-sexual stereotypes and responsibility attribution in rape trials involving intoxicants (2007) 20(4) *Social and*

## Conclusion

*Plomet v Worgan* provides some rare, valuable and suggestive material on medieval English medical practice, extending our picture of such practice to an earlier period, a less well-known geographical area and down the scale of social rank and respectability from the usual subjects of writing on medieval English medicine. While it cannot provide definitive answers about the ingredients of the preparation which it calls *dwoledreng*, it does at least show a degree of public understanding and acceptance at this time of an anaesthetic or soporific drug by this name, which might be used in surgery and which would have significant effects on a patient's consciousness or capacity for willed action. If *dwoledreng* cannot be identified with Voigts-Hudson dwale, so that we could date this particular mixture to a period significantly earlier than existing written receipts, it seems likely that there is at least some 'family resemblance'.

The case also gives some insights into the treatment of medical misconduct before the better-known development of the 'medical negligence' jurisdiction of actions on the case in the second half of the fourteenth century and the growth of professional regulation. *Plomet v Worgan* is one case amongst many in the medieval plea rolls, and as such, it cannot be pushed too far. A single example of an apparent rogue is not enough to condemn medieval English surgeons at all levels and in all areas, but the findings against Ralph de Worgan are worth putting into the balance, alongside examples of more conscientious practitioners,<sup>100</sup> and the case gives some

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*Legal Studies* 591-614; A. Wertheimer, 'Intoxicated consent to sexual relations' *Law and Philosophy* 20:4 (2001) 373-401; S Cowan, 'The trouble with drink: intoxication, (in)capacity and the evaporation of consent to sex' *Akron Law Review* 41:4 (2008) 899-922; Y. Russell, 'Thinking sexual difference through the law of rape' *Law and Critique* 24 (2013), 255-75; K. Stevenson, 'Unequivocal victims: the historical roots of the mystification of the female complainant in rape cases', *Feminist Legal Studies* 8 (2000) 343-66. Note also recent interest in different ways of dealing with rape, additional to, or instead of, punitive criminal sanctions: N.M. Godden, 'Seeking Justice for Victim-Survivors Unconventional Legal Responses to Rape' Ph.D. thesis, University of Durham, 2013. C. McGlynn, M. Westmarland and N. Godden, 'I just wanted him to hear me': sexual violence and the possibilities of restorative justice', *Journal of Law and Society* 39 (2012), 213-40.

<sup>100</sup> For more and less positive views on medieval physicians and surgery, see Butler, *Forensic Medicine*, 218-19; V. Nutton, 'Medicine in Medieval Western Europe 1000-1500' in L.L. Conrad et al (eds) *The Western Medical Tradition 800BC-AD 1800* (Cambridge, 1995) p 161; R. Gasse, 'The practice of medicine in Piers Plowman' *The Chaucer Review* 39.2 (2004) 188; Rawcliffe, *Medicine*

interesting background, both to the struggle of those practitioners who regarded themselves as respectable to distance themselves from less reputable medics in the later medieval period,<sup>101</sup> and to the legal responses to 'medical negligence' which would appear in common law records from the fourteenth century onwards.<sup>102</sup> It can also contribute to debates on women's 'healthcare agency' and the experience of female patients.

In relation to litigation, *Plomet v Worgan* highlights the possibilities which plaintiffs presented to women whose cases did not fit the requirements of existing legal formulations, and shows that, while (male) juries might be very hostile to women's complaints of sexual offences, it was not out of the question that they might choose to recognise that a wrong had been committed, even when the complainant did not claim to have been a virgin, did not allege additional violence and might have been thought to have put herself in harm's way. The implications of this spectrum of available responses are complex: on one hand it could be taken as a reason to view medieval male jurors' attitudes to women as rather more generous than we might have supposed, but, on the other hand, if we accept that they were able to conceive of the sort of conduct of which they decided Ralph was guilty as a sexual offence against Isabella, does that not make their decisions in other cases appear more deliberately lacking in generosity to the other women who appeared before them, complaining of sexual offences?

In relation to larger questions of gender and 'the position of women' in medieval England, this case may be seen as evidence of a woman's agency, in that Isabella Plomet was able to bring her case, and to persuade a jury to find in her favour, and yet the sexual offence which is the subject matter of the plaint and the way in which the events in question were described, effacing her activity and denying her willed

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*and Society*, 72. Note the murderous *medicus* in A. Harding (ed.), *Shropshire eyre 1256*, SS 96 p. 236 no 644 and the somewhat unscrupulous later surgeon in Butler, 'Portrait of a surgeon'. For other offences allegedly committed by medical men, see Talbot and Hammond 10, 95, 107; 108, 123, 239.

<sup>101</sup> See, e.g., Butler, *Forensic Medicine*, 234.

<sup>102</sup> While the jury here may also have been concerned about Ralph's failure to carry out his agreement with Isabella, the entries suggest that the case rested squarely on sexual misconduct rather than 'nonfeasance'. It would have been possible for Isabella to emphasise the 'breach of covenant' case here, or for the jury to do so in its finding. Neither did so. For cases in which, by contrast, the failure to carry out a cure or course of treatment which had been the subject of a covenant is the cause of action, see, e.g., *Anon.* (1321) 86 SS 353; *Warner v Leech* (1330 Bedfordshire eyre: JUST 1/23 m.93; Kiralfy, *Source Book*, 184-5; J.H. Baker, 'Deeds speak louder than words: covenants and the law of proof 1290-1321' in *Laws, Lawyers and Texts: studies in honour of Paul Brand*, 177-200, 193.

action, tend to militate against a construction emphasising the independent agency of medieval women. Ultimately, we cannot expect the short reports of one isolated case to provide simple and definitive answer to the questions modern scholars would like to pose. *Plomet v. Worgan*, however, with the glimpses it provides into medieval, gender, medicine, law and society, deserves inclusion in the stimulating complex of scholarship in these areas.